

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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EBERTO BAUTISTA,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.¹

Case No. 3:18-cv-00194-MMD-CSD

ORDER

I. SUMMARY

On March 4, 2021, the Court granted Defendants' motion for summary judgment in its entirety. (ECF No. 84 ("SJ Order").) After judgment was entered, pro se Plaintiff Eberto Bautista appealed. (ECF No. 86.) The Ninth Circuit affirmed in part, finding that summary judgment was appropriate on Plaintiff's First Amendment and RLUIPA² claims as they related to the NDOC's policy that inmates must acquire group worship consumables themselves as well as on his equal protection claim. (ECF No. 91 at 3.) The Ninth Circuit also vacated the SJ Order in part, finding summary judgment was not appropriate on Plaintiff's First Amendment and RLUIPA claims "arising from the Common Fare diet and its preparation." (*Id.* at 4.) To effectuate the mandate, the Court vacated its SJ Order in part. (ECF No. 95 ("Order").) Plaintiff's pro bono counsel moved for reconsideration of the Order, asking the Court to reconsider the limitation of issues for

¹Defendants are Nevada Department of Corrections ("NDOC") Director Charles Daniels, former Lovelock Correctional Center ("LCC") Warden Renee Baker, LCC Culinary Food Services Manager Maribelle Henry, and Rabbi Yisroel Roskamm.

²Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc-2000cc-5.

1 trial. (ECF No. 143("Motion").)³ Because the Court agrees that the Order identifies the
 2 issues for trial more narrowly than the Ninth Circuit's disposition, the Court grants
 3 the Motion.

4 **II. DISCUSSION**

5 Reconsideration is appropriate if the Court "(1) is presented with newly discovered
 6 evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if
 7 there is an intervening change in controlling law." *Sch. Dist. No. 1J v. ACandS, Inc.*, 5
 8 F.3d 1255, 1263 (9th Cir. 1993). Plaintiff asks the Court to reconsider the Order on the
 9 second ground, asserting the Court clearly erred in limiting the issues for trial. (ECF No.
 10 143 at 4.)

11 The SJ Order recognized that Plaintiff's First Amendment's free exercise clause
 12 and RLUIP claims are grounded on three cognizable arguments that Defendants
 13 substantially burdened Plaintiff's religious practice: sufficiency of the Common Fare diet;
 14 inadequacy of kosher meal preparations; and availability of required religious materials
 15 for service and high holy days, requiring Plaintiff to purchase items needed. (ECF No. 84
 16 at 9-12.) The Court granted summary judgment on all three grounds, finding Plaintiff's
 17 allegations failed to show that Defendants substantially burdened his religious exercise.
 18 (*Id.*) The Court also excluded from consideration Plaintiff's allegations that the Court
 19 determined were newly raised in connection with summary judgment. (*Id.* at 5, 11.)

20 The Ninth Circuit affirmed summary judgment only as to the third ground—that
 21 Plaintiff failed to show "the prison policy requiring inmates to acquire group consumables
 22 themselves" substantially burdened Plaintiff's group worship activities. (ECF No. 91 at
 23 3.)⁴ The Ninth Circuit found the Court "erred in granting summary judgment to the
 24 Defendants on Bautista's First Amendment and RLUIPA claims arising from the Common
 25 Fare diet and its preparation." (*Id.* at 4.) The Ninth Circuit further determined that this
 26

27 ³Defendants responded (ECF No. 143) and Plaintiff replied (ECF No. 148).

28 ⁴The Ninth Circuit also affirmed the SJ Order as to Plaintiff's equal protection
 claims. (ECF No. 91 at 3.) But that ruling is not relevant to the Motion.

1 Court “erred in refusing to consider much of Bautista’s proffered evidence detailing his
2 religious dietary needs.” (*Id.*) But in effectuating the mandate, the Order indicated that
3 “[t]he court found there was genuine dispute of material fact as to whether Bautista’s
4 religious beliefs required him to receive meals prepared only by heterosexual individuals
5 and whether those beliefs have been substantially burdened.” (ECF No. 95 at 2.) The
6 Court then directed that the order granting summary judgment “is vacated in part as
7 specified herein.” (*Id.* at 2.) Thus, the Order is clearly erroneous and created a confusing
8 record that the issues for trial are limited to “meals prepared only by heterosexual.” That
9 error warrants reconsideration.

10 The Court agrees with Plaintiff that the Ninth Circuit’s disposition reverses
11 summary judgment on the first two grounds: sufficiency of the Common Fare diet and
12 inadequacy of kosher meal preparations. The Order erroneously limited Plaintiff’s claims
13 for trial. The Court accordingly grants the Motion. The remaining First Amendment and
14 RLUIPA claims cover Plaintiff’s allegations relating to the adequacy of the Common Fare
15 diet and of kosher meal preparations.

16 The SJ Order excluded Plaintiff’s new allegations raised in connection with
17 summary judgment. (ECF No. 84 at 5 n. 3, 11.) Plaintiff argues the Court should allow
18 him to proceed on these allegations consistent with the Ninth Circuit’s disposition. While
19 the Ninth Circuit did not identify what “Bautista’s proffered evidence detailing his religious
20 dietary needs” the Court erred in refusing to consider (ECF No. 91 at 4), the Court agrees
21 with Plaintiff that the Court should construe the disposition to include the evidence that
22 the Court excluded in the SJ Order. Accordingly, the Court grants the Motion to allow for
23 trial to proceed on the issues identified in the Motion (ECF No. 143 at 5-6).⁵

24 **III. CONCLUSION**

25 The Court notes that the parties made several arguments and cited to several
26 cases not discussed above. The Court reviewed these arguments and cases and
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28 ⁵The Court declines to consider Defendants’ alternative argument raised in its
opposition brief as to discovery and renewed summary judgment motion.

1 determines that they do not warrant discussion as they do not affect the outcome of the
2 motion before the Court.

3 It is therefore ordered that Plaintiff's motion for reconsideration (ECF No. 143)
4 is granted.

5 It is further ordered that the parties file a joint status report, proposing a schedule
6 to bring this case to trial. The joint status report must be filed within 14 days.

7 DATED THIS 10th Day of February 2025.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE